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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Bruce Collins

Vice President and General Counsel

June 7, 1994

BY HAND

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

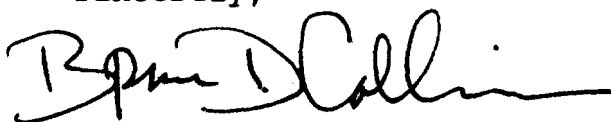
Re: Comments on the Going Forward Rules; MM
Docket 92-266

Dear Ms. Searcy:


Enclosed are one original and 11 copies of
National Cable Satellite Corporation's (d/b/a C-SPAN)
comments submitted to the above-referenced docket as
required by Sec. 1.429 of the Commission's rules.

If you have any question about these comments
please contact me at (202) 626-7950.

Sincerely,



Enclosures



**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

DOCKET FILE COPY ORIGINAL

In the Matter of)

Implementation of Sections of)
the Cable Television Consumer)
Protection and Competition Act)
of 1992)

Rate Regulation)

MM Docket No. 92-266

**COMMENTS of C-SPAN and C-SPAN 2
(National Cable Satellite Corporation, d/b/a C-SPAN)**

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To: The Commission

COMMENTS of C-SPAN and C-SPAN 2

Introduction

The National Cable Satellite Corporation, d/b/a C-SPAN ("NCSC") respectfully submits its comments in response to the Commission's Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, FCC 94-38, MM Docket No. 92-266 (rel. March 30, 1994). These comments are addressed in particular to the so-called going forward rules of the Commission's most recent rate orders.¹ Those orders contain significant disincentives to cable television operators to add or even retain low-cost and no-cost cable programming services on their regulated tiers of basic service--a result contrary to the stated intention of both the Congress and the Commission. The

¹ The specific concern of these comments is the pass-through of network licensing fees adjusted upward by 7.5 percent plus an adjustment to cover channel changes based on the number of regulated channels and the number of channels added to or deleted from a given tier.

segments of their cable television audiences with little prospect of recovering that access, and that NCSC's plans to create new programming services have been put on hold indefinitely.

Background of Commenter

NCSC is a non-stock, non-profit corporation created by the cable television industry and is the producer and exclusive distributor of two full-time satellite-delivered public affairs programming services, C-SPAN and C-SPAN 2. Each service is available via cable television systems and other distributors and is devoted entirely to information and public affairs programming, including the live gavel-to-gavel coverage of the proceedings of both the U.S. House of Representatives (on C-SPAN) and the U.S. Senate (on C-SPAN 2), and a variety of other events at public forums around the country and the world.

Comments

I. **The Going Forward Rules Add Significantly to the Harm the C-SPAN Networks Have Already Suffered as a Result of the Cable Act.**

NCSC launched C-SPAN in 1979 with a reach to 3 million cable television households. Since 1982, when the network established reliable satellite distribution of its signal, it experienced uninterrupted growth each year in both the number of its affiliated cable systems and in the number of cable households it reached. After more than 13 years, and operating in an unregulated environment, C-SPAN was being delivered to a very impressive 93% of all cable homes in the country. It is now the eighth most widely distributed basic cable network in the

industry. The growth experience of C-SPAN 2 is the same. It was launched to 10.3 million cable television households in 1986 when the Senate permitted its debates to be televised. At the end of 6 years C-SPAN 2 was reaching nearly half of all cable homes, and growing rapidly.

The extraordinary growth of both networks came to a halt in late 1992 with the enactment of the Cable Television Consumer Protection and Competition Act. From that time until today, carriage of the C-SPAN Networks has been either cut back or dropped entirely to over 4 million households. At least 2.5 million of those households experienced a loss of C-SPAN service as a direct result of the must carry provision of the Act. The remainder lost service as a result of the Act's retransmission consent provision.

NCSC acknowledges that the Commission is not in a position to change the regulatory landscape with respect to must carry and retransmission consent. The harm done to the C-SPAN Networks to date by the Cable Act is best resolved by Congress or the courts.² However, the Commission can, and must undo the damage done to NCSC's public service programming efforts by the going forward rules, and it should do so promptly.

II. C-SPAN and C-SPAN 2 are Particularly Vulnerable to the Disincentives Built into the Going Forward Rules.

The Commission attempted to provide an incentive to cable

² NCSC is a co-plaintiff in the lawsuit (Turner v. FCC) challenging the must carry provision of the Cable Act on First Amendment grounds.

operators to retain and add cable programming services in the new rate regulation environment. The so-called incentive includes a straight pass-through of programming license fees plus a 7.5% mark-up of that cost to the consumer. Moreover, an additional adjustment to the pass-through is permitted to compensate the operator for the costs associated with the addition of the programming service. That adjustment is based on several factors, including the number of regulated channels on the system. As the Commission now knows, its effort at providing an incentive has backfired. Its going forward rules in this respect actually act as a disincentive to operators to add or even keep low-cost or no-cost services like the C-SPAN Networks.

In pricing its programming services, NCSC chose an approach that encouraged broad carriage to the maximum number of American households rather than an approach that would generate the maximum amount of revenue. The approach was fully in keeping with both NCSC's non-profit status, and its public service mission. A natural consequence of that approach was that C-SPAN is a low-cost service and C-SPAN 2 is a no-cost service. The license fee NCSC charges cable operators for C-SPAN is 5 cents per subscriber per month. That makes C-SPAN one of the least expensive basic cable services in the industry. If a cable system carries C-SPAN on a full time basis, it may carry C-SPAN 2 without any additional license fee.

In a further effort to encourage carriage, NCSC offers large systems and multi-system operators ("MSO's") a volume rate. For

every subscriber in the system or MSO over 200,000, NCSC charges 3.5 cents per month to receive C-SPAN regardless of whether a particular subscriber on a system or a system within an MSO actually receives the service. This pricing structure has provided a powerful incentive over the years for the larger systems to put C-SPAN on the basic tier, and for the large MSO's to put the service on all of their systems. The result of NCSC's pricing strategy has an extraordinary level of carriage of C-SPAN and steady growth in carriage of C-SPAN 2.

C-SPAN and C-SPAN 2 are now being punished by the going forward rules. Simple mathematics make the point. A cable operator whose rates have not only been regulated, but have also been cut back by as much as 17% will have a choice between dedicating scarce channel space to C-SPAN or to another programming service. Under the current regulatory scheme, the most additional revenue an operator would be able to recover by choosing to add C-SPAN would be the 5 cent license fee plus the 7.5% mark up (3 tenths of a cent). For most systems, the channel change adjustment would not exceed an additional penny. The operator, struggling to make up for revenue lost to recent rate rollbacks, thus has strong incentive to dedicate that channel either to a more costly service on the regulated tier or on the less regulated a la carte tier. Both alternatives result in greater revenue to the operator than does choosing C-SPAN.

As a no-cost service, C-SPAN 2 is in an even worse position because the 7.5% mark up disappears entirely. As has been

pointed out often to the Commission since the going forward rules were released, "7.5% of nothing is still nothing." The addition of C-SPAN 2 to any system becomes a non-starter in the current rate regulated environment.

But the disincentive to NCSC's public service programming does not end there. The threat to the C-SPAN Networks is compounded because the going forward rules do more than simply discourage the addition of the services; they actually provide an economic incentive for the C-SPAN services to be dropped. Just as an operator is permitted to increase subscriber fees when adding a programming service, he is also required to decrease fees (by the amount of the license fee, plus the mark up and channel adjustment amounts) when deleting a service. Thus, an operator who drops a low-cost service (such as C-SPAN) in favor of a higher-cost service (such as almost any other basic programming service) has improved his economic position under the rules--lose a little, gain a lot.

III. Effect of the Rules: The Public's Access to Televised Coverage of the U.S. Senate Will Likely Remain a Distant Second to that of the House of Representatives.

NCSC had always expected that in an unregulated environment the cable audience reach of C-SPAN and C-SPAN 2 would eventually reach parity. Indeed, C-SPAN 2, which features the gavel-to-gavel and "live" coverage of Senate proceedings, was launched with nearly three times the number of subscribers as C-SPAN had at its launch, and it steadily gained audience reach over the years. Our expectations were based on continued rapid industry

growth in penetration and expanded channel capacity through the application of compression technology and general system upgrades. Those expectations have been radically altered since the Cable Act became law. In light of the Cable Act, and now, the going forward rules and their disincentives to operators to offer a no-cost service like C-SPAN 2, we have no expectation that C-SPAN 2 will reach parity with C-SPAN anytime soon. Not only has the audience reach of C-SPAN 2 stopped growing, it has actually decreased both absolutely, and relative to that of C-SPAN. As the new so-called retransmission consent channels come on line (and some already have been launched), they represent even greater competition for channel capacity to a C-SPAN 2 seriously weakened by the going forward rules.

The Commission's rules have virtually assured that the national legislature's co-equal bodies will remain unequal in their availability to the American cable television audience.

IV. Effect of the Rules: The Growth of C-SPAN's Cable Audience Reach Will Certainly be Slowed, if Not Absolutely Halted, for the Foreseeable Future.

For the first time since its creation in 1979, C-SPAN has virtually no current commitments from any cable operator to launch the service anywhere in the country. This state of affairs is in dramatic contrast to the pre-Cable Act year of 1992 when C-SPAN was launched in several systems around the country, many with large subscriber counts. On the basis of recent meetings and other contacts with both affiliated and non-affiliated cable system operators, NCSC now expects that C-SPAN's

only growth in audience reach from this point forward will come as existing affiliates add subscribers. The non-affiliated systems have made it clear that despite the public service appeal of the network, the new regulatory environment is simply not hospitable to it.

The rules also effectively bring to a halt NCSC's steady progress in solving a journalistic content concern brought on by channel capacity limits. Those limits forced many of NCSC's affiliated cable operators to carry C-SPAN on only a part-time basis, sharing it with another programming service. In as much as the presentation of the network's editorial content is premised on 24-hour carriage, part-time carriage has the effect of distorting that presentation. Accordingly, NCSC devoted significant time and attention to solving that problem. We had been successful over the years in working with operators to place C-SPAN on a channel of its own as system capacities were expanded. Our success rate in that effort has effectively ended. It has ended for the same reasons C-SPAN's ability to sign up new affiliates has ended--the going forward rules contain too many economic disincentives to cable operators.

V. Effect of the Rules: Plans to Expand NCSC's Public Affairs Programming Have Been Put on Hold.

In June, 1993, NCSC's board of directors unanimously approved a long-range corporate plan to assure that the C-SPAN Networks' public affairs programming continued to thrive in the increasingly diverse and competitive communications environment. The plan, called "C-SPAN 2000," was a strong endorsement by the

cable industry's leaders of NCSC's public service mission. It called for increased funding, and for the creation of new programming services that would take advantage of industry growth and technological advances, such as video compression. The plan was approved after the Cable Act was passed, but before the full effect of the Act's provisions and the implementing rules became known.

A key part of C-SPAN 2000 was the creation of C-SPAN 3--a new (and, at first) occasional service that would address a program scheduling constraint created by the C-SPAN Networks' commitment to carry the entirety of House and Senate proceedings on a "live" basis. That commitment prevented NCSC from offering "live" coverage of the many other important public affairs events such as presidential addresses, hearings testimony or news conferences that were taking place while Congress was in session. C-SPAN 3 would allow NCSC to provide such coverage to subscribers in systems with available capacity. The new service was launched in April of this year, and was offered to C-SPAN affiliates on a no-cost basis. For all the reasons cited above, cable operators were unable to support the new service. C-SPAN 3 is now officially on hiatus.

C-SPAN 3 was not the only casualty of the going forward rules. The C-SPAN 2000 plan also provided for the creation of C-SPAN 4 and C-SPAN 5, which would offer a broader range of programming (including internationally-oriented programs) and greater flexibility for viewers in taking advantage of the C-SPAN

long-form style of television coverage. The success of these two additional no-cost services was dependent on a vigorous and expanding cable industry. As of this writing, C-SPAN 4 and C-SPAN 5 are still only part of a plan.

Conclusion

NCSC urges the Commission to act promptly to create incentives and to eliminate the disincentives contained in the going forward rules for cable operators to add and retain low-cost and no-cost cable programming services on their systems. A variety of proposals have been offered by other commenters as to precisely what combination of mark-up and pass-through would provide those incentives. As a cable programmer, NCSC is less well positioned than cable operators to tell the Commission which mix of policies will provide such incentives. We are well positioned, however, to convey to the Commission the real harm done already, and the prospect harm in the future to the ability of the C-SPAN Networks to fulfill their public service mission by the going forward rules as they are presently constituted. For the foregoing reasons, we respectfully urge the Commission to act, and to do promptly.

Respectfully submitted

NATIONAL CABLE SATELLITE CORPORATION

By: 

Bruce D. Collins, Esq.
Corporate V.P. & General Counsel

Date: June 7, 1994

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